

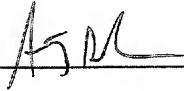
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

9400-386 (00392)

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on August 19, 2009.

Signature



Typed or printed name

Anthony DeRosa

Application Number

10/090,180

Filed

March 4, 2002

First Named Inventor

A. Chet McQuaide

Art Unit

3694

Examiner

I. Jung Liu

Applicant requests review of the final rejection in the above-identified application.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record.

Registration number 40,519

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34



Signature

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Typed or printed name

919-854-1400

Telephone number

August 19, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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*Total of 1 forms are submitted.

**RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE EXAMINING GROUP 3694**

Attorney Docket No. 9400-386 (00392)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: A. Chet McQuaide et al.
Serial No.: 10/090,180
Filed: March 4, 2002
For: CREDIT CARD MESSENGER

Confirmation No.: 4756
Examiner: I. Jung Liu
Group Art Unit: 3694

August 19, 2009

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Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program, which have been extended indefinitely. Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed May 28, 2009 (hereinafter "Final Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

It is not believed that an extension of time and/or additional fee(s)-including fees for net addition of claims-are required, beyond those that may otherwise be provided for in documents accompanying this paper. In the event, however, that an extension of time is necessary to allow consideration of this paper, such an extension is hereby petitioned under 37 C.F.R. §1.136(a). Any additional fees believed to be due in connection with this paper may be charged to our Deposit Account No. 50-0220.

As an initial matter, Applicants have amended independent Claims 1, 10 and 18 to overcome the rejections under §112 set forth in the Final Action in an Amendment filed concurrently with this paper.

Applicants respectfully submit that the rejections of the currently pending claims under §103 are clearly erroneous because many of the recitations of the pending claims are not met by the cited references for at least the reasons discussed herein. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Applicants will only discuss the recitations of independent Claims 1, 10, and 18.

Independent Claims 1, 10 and 18 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the combination of six (6) references: Campbell, Hudda, Chavez, Dutta, Official Notice (Martin), and Warmack. Applicants' independent Claim 1 recites a credit alert system, comprising:

a wireless subscriber account server for receiving a credit card alert from a credit card account database regarding at least one of available credit and credit status for a credit card account, *wherein the credit card account database does not have or have access to wireless subscriber account information for a person associated with the credit card account, wherein the credit card alert is unsolicited by the person associated with the credit card account;*

a wireless subscriber account database in communication with the wireless subscriber account server for storing wireless subscriber account information;

an application module in communication with the wireless subscriber account server for *comparing information contained in the unsolicited credit card alert to subscriber information contained in the wireless subscriber database to determine a wireless subscriber associated with a credit card account* and for preparing a message to communicate to a wireless device of a subscriber in response to receiving the unsolicited credit card alert from the credit card account database; and

a Wireless Application Protocol (WAP) push proxy gateway in communication with the wireless subscriber account server that sends the message to the wireless device of the subscriber using a mobile network service.

Independent Claims 10 and 18 contain similar recitations.

The primary reference, Campbell, describes an automated receivables management system that uses an electronic network to provide a self-service collection environment using an electronic network, such as the Internet or PCS, as a medium for communication and transaction execution. The Campbell system provides comprehensive collections services in a fully automated fashion, including account decisioning, treatment specification, communication channel specification, and communication to the customer with a method for payment/response from the customer using the electronic channel. Campbell specifically states that "the present invention provides the ability to e-mail or otherwise electronically send a notice to the delinquent, overlimit or special status customer." (Col. 8, Lines 7-11). Thus, the Campbell system *already has a customer's contact information*. The Campbell system has no need for a separate server or application module to determine how to contact a customer. Specifically, Campbell has no need for a wireless subscriber account database, a wireless subscriber account server, or an application module in communication with the wireless subscriber account server for "*comparing information contained in the credit card alert to subscriber information contained in the wireless subscriber database to determine a wireless subscriber associated with a credit card account* and for *preparing a message to communicate to a wireless device of a subscriber in response to receiving the unsolicited*

credit card alert from the credit card account database", as recited in Claim 1. Moreover, Campbell fails to teach or suggest a "*Wireless Application Protocol (WAP) push proxy gateway* in communication with the wireless subscriber account server *that sends the message to the wireless device of the subscriber using a mobile network bearer service*", as recited in Claim 1.

The credit card alert system recited in Claim 1 is utilized by credit card companies that *do not know or have access to a customer's wireless device information*. Moreover, unlike the Campbell system, the credit card alert system recited in Claim 1 cannot send a message directly to a customer's wireless device. As recited in independent Claim 1, Applicants' credit alert system utilizes a wireless subscriber account server for receiving an unsolicited credit card alert from a credit card account database, *wherein the credit card account database does not have or have access to wireless subscriber account information for a person associated with the credit card account*. A wireless subscriber account database that stores wireless subscriber account information is in communication with the wireless subscriber account server. An application module is in communication with the wireless subscriber account server for *comparing information contained in the credit card alert to subscriber information contained in the wireless subscriber database to determine a wireless subscriber associated with a credit card account* and for *preparing a message to communicate to a wireless device of a subscriber in response to receiving the unsolicited credit card alert* from the credit card account database. A WAP push proxy gateway sends the message to the wireless device of the subscriber using a mobile network bearer service.

One skilled in the art would not be motivated to modify the Campbell system to include the recitations of Claim 1 since the Campbell system *already has a customer's contact information*. There would be no need to modify Campbell since the Campbell system already knows how to contact customers. As such, the combination of Campbell, Hudda, Chavez, Dutta, Official Notice (Martin), and Warmack is improper. Moreover, even if the teachings of Campbell were combined with those of Hudda, Chavez, Dutta, Official Notice (Martin), and Warmack, as suggested by the Final Action, the resultant combination would still lack Applicants' variously claimed features relating to a credit card account.

The five secondary references appear to be the result of "keyword" searches seeking to find various recited elements of Applicants' independent claims. The Final Action is engaged in a hypothetical re-design of the Campbell system in an attempt to reconstruct independent Claims 1, 10 and 18 of this application using the Applicants' claims as a roadmap. However, in doing so, the Final Action has engaged in exactly the kind of

impermissible hindsight that was recently condemned by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc., et al.*, 550 U.S. 1 (2007).

Hudda describes a system for purchasing goods and services in a wireless fashion while the consumer is in-store at a retailer's establishment or remotely through wireless interaction with the retailer. (Hudda, Para. 0056). Hudda is silent with respect to a system for purchasing goods and services that allows consumers to receive unsolicited credit card messages regarding important changes to their credit card or other line of credit status. Moreover, Hudda fails to teach or suggest an application module in communication with a wireless subscriber account server for "*comparing information contained in the credit card alert to subscriber information contained in the wireless subscriber database to determine a wireless subscriber associated with a credit card account* and for *preparing a message to communicate to a wireless device of a subscriber in response to receiving the unsolicited credit card alert* from the credit card account database", as recited in Claim 1.

Chavez describes a credit card and credit card verifier device. Chavez has nothing to do with allowing consumers to receive unsolicited credit card messages regarding important changes to their credit card or other line of credit status. The Campbell system already has a customer's contact information. There is no motivation to modify Campbell to come up with another way of determining how to contact customers since the Campbell system already knows how to contact them. There certainly is no motivation provided by the credit card and card verifier device of Chavez to modify Campbell.

Dutta describes remotely disabling and enabling access to secure transaction functions of a mobile terminal. A service enables a user to block access to the payment and user authentication functions in the security element of a phone or other type of mobile terminal by sending a radio message, such as a wireless application protocol (WAP) push message. (Dutta, Abstract). However, Dutta has absolutely nothing to do with allowing consumers to receive unsolicited credit card messages regarding important changes to their credit card or other line of credit status. The mere fact that Dutta uses the term "WAP push message" does not provide motivation to modify Campbell to come up with another way of determining how to contact customers that the Campbell system already knows how to contact.

The Final Action cites Martin as evidencing Official Notice that "wherein database does not have or have access to account information for person associated with credit card account and comparing information contained in the credit card alert to subscriber information contained in the wireless database features is old and well known in the credit card industry to ensure security of the customer information." (Final Action, page 5). Martin

describes a hotel check-in system that is merely a credit card verification system. *Nothing in Martin teaches or suggests a credit card service wanting to send an alert to a credit card owner.* The Martin hotel check-in system merely verifies the validity of a credit card inserted by a user. However, this certainly does not lead one skilled in the art to arrive at Applicants' claimed subject matter. Martin does not teach or suggest an application module in communication with a wireless subscriber account server for "*comparing information contained in the credit card alert to subscriber information contained in the wireless subscriber database to determine a wireless subscriber associated with a credit card account and for preparing a message to communicate to a wireless device of a subscriber in response to receiving the unsolicited credit card alert* from the credit card account database", as recited in Claim 1.

Warmack describes a system for notifying credit card owners of any suspicious and/or all purchases/debits. However, the Warmack system *has a customer's contact information*, such as cell phone number (See, para. [0051]). The Warmack system has no need for a separate server or application module to determine how to contact a customer.

For at least the foregoing reasons, Applicants respectfully request that the present application be reviewed and that the rejection of independent Claims 1, 10, and 18 be reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,

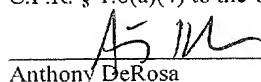


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CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with 37 C.F.R. § 1.6(a)(4) to the U.S. Patent and Trademark Office on **August 19, 2009**.



Anthony DeRosa